APPENDIX

APPENDIX A

IN THE CRIMINAL COURT OF RECORD, in and for Dade County, State of Florida, APRIL Term, 1967.

Case No. 66-6089

THE STATE OF FLORIDA

vs.

MORTIMER NORMAN KORAN

INFORMATION FOR

UNLAWFUL POSSESSION OF COUNTERFEIT DRIVER'S LICENSES

IN THE NAME AND BY AUTHORITY OF THE STATE OF FLORIDA:

RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, information makes that MORTIMER NORMAN KORAN, on the 1st day of July, 1966, in the County and State aforesaid, did unlawfully, knowingly and feloniously have in his possession certain fictitious or counterfeit operator's driver's licenses of the State of Florida, to-wit: Approximately one hundred (100) operator's licenses each numbered E-200201, the defendant at the said time and place well knowing that said driver's licenses then in his possession were fictitious or counterfeit as aforesaid, in violation of 322.212 (1) Florida Statutes, contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

RICHARD E. GERSTEIN,
State Attorney,
Eleventh Judicial Circuit of Florida

STATE OF FLORIDA:

COUNTY OF DADE:

Personally appeared before me, RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, who, being first duly sworn, says that the allegations set forth in the within Information are based upon facts that have been sworn to as true, and which facts, if true, would constitute the offense therein charged.

RICHARD E. GERSTEIN,
State Attorney,
Eleventh Judicial Circuit of Florida

Sworn to and subscribed before me this 24th day of May, 1967.

J. F. McCracken, Clerk
Criminal Court of Record, Dade County, Florida

Seal: Criminal Court of Record

By Lynda Larurere, D. C.

Defendant MORTIMER NORMAN KORAN.

WITNESSES FOR THE STATE

1. L. D. Brady, 817 Coral Dr., West Palm Beach

2. Keith Hardin, MPD

3. Art Rivers,

4. K. D. Hansen,

5. P. L. Lindsley,

6. D. V. Shalfon,
Treasury Dept., 300 Northeast 1 Avenue

7. Steve Poznanski, PSD

I hereby certify that this instrument is a true and correct copy as shown by files and records in my office. WITNESS MY HAND and official seal this June 6, 1967.

J. F. McCRACKEN,
Clerk Criminal Court of Record

Seal: Criminal Court of Record

By Mary Krissel, D. C.

APPENDIX B

(TITLE OMITTED)

MOTION TO SUPPRESS

COMES NOW the Defendant, MORTIMER NORMAN KORAN, by and through his undersigned attorneys, and files this his Motion to Suppress any and all evidence which the prosecution intends to introduce against the Defendant in the forth coming trial of the above entitled cause, which evidence was obtained as a result of an illegal arrest and/or unlawful search and seizure contrary to the Constitution of the State of Florida and the Constitution of the United States of America.

H. ROBERT KOLTNOW and
GERALD KOGAN
Attorneys for Defendant
1201 Biscayne Building
Miami, Florida 33130

By: Gerald Kogan

I HEREBY CERTIFY that a copy of the foregoing Motion to Suppress was mailed to RICHARD E. GERSTEIN, State Attorney, Attorney for State of Florida, 1351 N. W. 12th Street, Miami, Florida, this 9th day of June, 1967.

Gerald Kogan

APPENDIX C

(And on November 30, 1967, the Court entered herein its JUDGMENT AND SENTENCE, which said JUDGMENT AND SENTENCE was duly filed and recorded on said date by the Clerk of the Court in Criminal Court of Record Minute Book No. 265, on Page 246, and is in his words and figures following, to-wit:)

BENCH DOCKET

Criminal Court of Record
Dade County, Florida

STATE OF FLORIDA

VS.

MORTIMER NORMAN KORAN

CHARGE, UNLAWFUL POSSESSION OF COUNTERFEIT DRIVER'S LICENSES

Case No. 66-6089

JUDGMENT

It appearing unto this Court that you, Mortimer Norman Koran, have been regularly tried and convicted of Unlawful Possession of Counterfeit Driver's Licenses.

IT IS THEREFORE THE JUDGMENT of the law and it is hereby adjudged that you are and stand convicted of the offense as above set forth.

What have you to say why sentence should not now be imposed upon you?

Saying nothing that could influence the Court in its decision.

SENTENCE

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that you be imprisoned by confinement at hard labor in the STATE PENITENTIARY for a term of THREE (3) YEARS, sentence to run concurrently with the sentence imposed by the Broward County Court of Record, in Case No. 66-10011.

DONE AND ORDERED in open Court at Miami, Dade County, Florida, this 30 day of November A. D. 1967.

/s/ PAUL BAKER, Judge.

Filed this 30 day of November A. D. 1967 and recorded in Criminal Court of Record, Minutes No. 265 on Page 246.

J. F. McCracken, Clerk
By: DORIS MCVAY
Deputy Clerk

DIV. A____B____C____D__/__

BOOK 265 PAGE 246

APPENDIX D

(TITLE OMITTED)

MOTION FOR NEW TRIAL

COMES NOW the Defendant, MORTIMER NORMAN KORAN, by and through his undersigned attorney, and moves this Honorable Court for a new trial on the following grounds:

1. That the verdict of the Jury is contrary to law.

2. That the verdict of the Jury is contrary to the evidence.

3. That the verdict of the Jury is contrary to both, the law and the evidence.

4. That the Court erred in denying the Defendant's Motion to Suppress all tape recorded telephone conversations held between the witness, Art Rivers, and the Defendant, as well as recordings made as a result of non-telephone conversations that took place between the witness, Art Rivers, and the Defendant.

5. That the Court erred in permitting the witness, Sgt. Brady, of the Florida Highway Patrol, to testify as an expert witness as to whether or not the drivers licenses in question were ficticious or counterfeit.

6. That the Court erred in failing to grant the Defendant's motion for a directed verdict at the conclusion of the State's case.

7. That the Court erred in refusing to grant the Defendant's motion for a directed verdict at the conclusion of all the evidence.

8. That the Court erred in failing to grant the Defendant's motion for a new trial when the prosecutor alluded to other crimes committed by the Defendant in his opening statement, when said other crimes were irrelevant to the instant case.

9. That the Court erred in granting the Defendant's motion for a mis-trial when the witness, Art Rivers testified to matters relating to the commissions of other crimes committed by the Defendant when said other crimes were irrelevant to the instant case.

Gerald Kogan
GERALD KOGAN
Attorney for Defendant
1201 Biscayne Building
Miami, Florida

I HEREBY CERTIFY that a copy of the foregoing Motion for New Trial was mailed to RICHARD E. GERSTEIN, State Attorney, Attorney for the State of Florida, 1351 N. W. 12th Street, Miami, Florida, this 23rd day of June, 1967.

Gerald Kogan
GERALD KOGAN

APPENDIX E

(TITLE OMITTED)

NOTICE OF APPEAL

NOTICE is hereby given that MORTIMER NORMAN KORAN, Defendant, by his undersigned attorneys, hereby appeals to the Third District Court of Appeal of Florida, from the Final Judgment entered in this proceeding on the 30th day of November, 1967, wherein the said Defendant was adjudicated guilty of the offense alleged in the Information herein, after a plea of not guilty to said Information and a Jury Trial, and was sentenced to a term of three (3) years. All parties to said cause are called upon to take notice of the entry of this appeal.

DATED this 30th day of November, 1967.

GERALD KOGAN and
H. ROBERT KOLTNOW
Attorneys for Defendant
1201 Biscayne Building
Miami, Florida 33130

/s/ GERALD KOGAN

I HEREBY CERTIFY that a copy of the foregoing Notice of Appeal was mailed to RICHARD E. GERSTEIN, State Attorney, 1351 N. W. 12th Street, Miami, Florida, this 30th day of November, 1967.

/s/ GERALD KOGAN

APPENDIX F

(TITLE OMITTED)

ASSIGNMENTS OF ERROR

The Defendant, by his undersigned attorneys, makes the following Assignments of Error upon which he will rely for reversal of the Verdict, Judgment and Sentence herein:

1. The Court erred in denying Defendant's Motion To Quash Information.

2. The Court erred in denying the Defendant's Motion To Suppress all tape recorded telephone conversations held between the witness, Art Rivers, and the Defendant, as well as recordings made as a result of non-telephone conversations that took place between the witness, Art Rivers, and the Defendant.

3. The Court erred in permitting the witness, Sgt. Brady, of the Florida Highway Patrol, to testify as an expert witness as to whether or not the drivers licenses in question were fictitious or counterfeit.

4. The Court erred in admitting into evidence in this case a counterfeit dollar bill, which related to other crimes irrelevant to the instant case.

5. The Court erred in denying Defendant's Motion For Mis-Trial when the prosecutor alluded to other crimes committed by the Defendant in his opening statement, when said other crimes were irrelevant to the instant case.

6. The Court erred in denying Defendant's Motion For Mis-Trial when the witness, Art Rivers, testified to matters relating to other crimes committed by the Defendant, when said other crimes were irrelevant to the instant case.

7. The Court erred in denying Defendant's Motions For Directed Verdicts Of Acquittal both at the close of the State's case and at the conclusion of the entire case.

8. The Court erred in denying Defendant's Motion For New Trial.

DIRECTIONS TO CLERK

Defendant, by his undersigned attorneys, as and for his Directions to the Clerk in making up the Transcript of Record on Appeal in this case, the following should be included:

1. Information

2. Pleas of Defendant

3. Motion To Quash Information

4. Order Denying Motion To Quash Information (Minutes)

5. Motion To Suppress

6. Order Denying Motion To Suppress (Minutes)

7. Reporter's Transcript of Testimony on Motion To Suppress to be supplied later

8. Reporter's Transcript of Testimony on Trial to be supplied later

9. Verdict, Judgment and Sentence

10. Motion For New Trial

11. Order Denying Motion For New Trial (Minutes)

12. Notice of Appeal

13. These Assignments of Error and Directions to Clerk

14. All Exhibits introduced at Trial

DESIGNATION OF NECESSARY PARTS OF TRANSCRIBED TESTIMONY

Defendant, by his undersigned attorneys, as and for his Designation Of Necessary Parts Of Transcribed Testimony, herein, directs that the entire Transcript of the Trial, omitting Voir Dire, together with a Transcript of the Testimony on the Motion To Suppress, be included as part of the original Record herein.

H. ROBERT KOLTNOW and
GERALD KOGAN
Attorneys for Defendant
1201 Biscayne Building
Miami, Florida 33130

By H. ROBERT KOLTNOW

I HEREBY CERTIFY that a copy of the above Assignments of Error, Directions to Clerk, Designation of Necessary Parts of Transcribed Testimony, was mailed to RICHARD E. GERSTEIN, State Attorney, 1351 N. W. 12th Street, Miami, Florida, this 18 day of December, 1967.

/s/ H. ROBERT KOLTNOW

APPENDIX G

(TITLE OMITTED)

CASE NO. 67-1021

Opinion filed August 20, 1968.

An Appeal from the Criminal Court of Record for Dade County, Paul Baker, Judge.

Gerald Kogan and H. Robert Koltnow, for appellant.

Earl Faircloth, Attorney General and David Cerf, Assistant Attorney General, for appellee.

Before BARKDULL, HENDRY and SWANN, JJ.

SWANN, Judge.

The defendant below, Mortimer Norman Koran, was charged by information in Dade County, Florida, with the unlawful possession of counterfeit driver's licenses in violation of Fla.Stat. § 322.212(1).

He was found guilty, by a jury, on June 20, 1967, and appeals from his judgment and sentence rendered November 30, 1967 for a term of three years in the state penitentiary.

His first point concerns an alleged violation of his constitutional rights by the introduction into evidence of certain tape recordings which were obtained by government agents using electronic surveillance devices. The recorded conversations were played before the jury after their authenticity had been established.

A part of the tape recording, which was generally objected to by the defendant, had been obtained by an undercover agent, one Rivers, who was wired with a microphone and radio transmitter while conversing with the defendant concerning certain criminal activities. These conversations between the undercover agent and the defendant took place under a bridge in Dade County, Florida. They were transmitted to a building nearby where other agents recorded the conversations. The tape also consisted of a recording of several telephone conversations between the defendant and Rivers, and was used to corroborate the direct testimony of Rivers.

Appellant relies heavily on a recent decision of the United States Supreme Court. See Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967), decided and released after the trial and judgment rendered in this case.

In Florida, generally, sound recorded evidence of oral conversation is admissible into evidence provided that a satisfactory degree of authenticity has been achieved; Gomien v. State, Fla.App. 1965, 172 So.2d 511, and where, as here, the person causing the recording to be made is the one whose actual testimony is sought to be corroborated by the recording. Hajdu v. State, Fla.App. 1966, 189 So.2d 230.

The recording of the oral conversation between the agent Rivers and the defendant was taken with the consent of one of the parties, Rivers. It was admissible under state law (Gomien and Hajdu, supra) and under federal law. Lopez v. United States, 373 U.S. 427, 83 S.Ct. 1381, 10 L.Ed.2d 462 (1963).

As Justice White, in his concurring opinion in Katz, supra, stated:

* * *

"In previous cases, which are undisturbed by today's decision, the Court has upheld, as reasonable under the Fourth Amendment, admission at trial of evidence obtained (1) by an undercover police agent to whom a defendant speaks without knowledge that he is in the employ of the police, Hoffa v. United States, 385 US 293, 17 L.ed.2d 374, 87 S.Ct. 408 (1966); (2) by a recording device hidden on the person of such an informant, Lopez v. United States, 373 US 427, 10 L.ed.2d 462, 83 S.Ct. 1381 (1963); Osborn v. United States, 385 US 323, 17 L.ed.2d 394, 87 S.Ct. 429 (1966); and (3) by a policeman listening to the secret mircowave transmissions of an agent conversing with the defendant in another location, On Lee v. United States, 343 US 747, 96 L.ed 1270, 72 S.Ct. 967 (1952). When one man speaks to another he takes all the risks ordinarily inherent in so doing, including the risk that the man to whom he speaks will make public what he has heard. The Fourth Amendment does not protect against unreliable (or law-abiding) associates. Hoffa v. United States, supra. It is but a logical and reasonable extension of this principle that a man take the risk that his hearer, free to momorize what he hears for later verbatim repetitions, is instead recording it or transmitting it to another. The present case deals with an entirely different situation, for as the Court emphasizes the petitioner 'sought to ex-

clude . . . the uninvited ear,' and spoke under circumstances in which a reasonable person would assume that uninvited ears were not listening." [Id, 19 L.ed.2d 589]

* * *

The admissibility into evidence of the recorded telephone conversations between the undercover agent and the defendant brings into play a separate and distinct set of rules in our opinion. Formerly the federal law generally required that such evidence must be suppressed, upon proper motion, in federal courts but not in state courts. Schwartz v. Texas, 344 U.S. 199, 73 S.Ct. 232, 97 L.Ed. 231 (1952).

In Katz, supra, the U. S. Supreme Court overruled its earlier decisions of Olmstead v. United States, 277 U.S. 438, 48 S.Ct. 564, 72 L.Ed. 944 (1928) and Goldman v. United States, 316 U.S. 129, 62 S.Ct. 993, 86 L.Ed. 1322 (1942). It announced that a defendant in federal court charged with violation of a federal statute was protected by the Fourth Amendment to the Federal Constitution and that his federal constitutional rights were violated by the actions of F.B.I. agents in attaching an electronic listening device to a public telephone booth and introducing a recording of such private conversations into evidence over proper objections.

In the instant case one of the parties to the recorded telephone conversations consented to the recording and permitted a recording device to be attached to the telephone. This distinguishes the facts herein from Katz, supra. See Griffith v. State, Fla.App. 1959, 111 So.2d 282; and Barker v. State, Fla. App. 1965, 172 So.2d 857.

The defendant in the instant cause made no specific objections in the trial court that the introduction of these tape recordings into evidence violated **his constitutional rights.** Generally, specific objections to the introduction of evidence must be raised in the court below in order to be properly considered on appeal.

Since specific objections on these grounds were not raised by the defendant in the court below, and since there is no judicial authority for applying Katz retroactively, and inasmuch as there has been no adjudication that Katz applies in state courts, we reject as untimely and unsound defendant's first point for reversal. Parenthetically, we note that no specific objection was made by the defendant to the introduction of the telephone recording on the ground that it violated any federal or state statute. See Lee v. State, 36 U.S.L. Week 4652 (U.S. June 17, 1968).

Defendant contends that the trial court erred in permitting references in the opening statement of the prosecution to other collateral offenses allegedly committed by him. This argument is without merit under the circumstances herein. Williams v. State, Fla. 1959, 110 So.2d 654; Winkfield v. State, Fla.App. 1968, 209 So.2d 468.

Lastly, the defendant seeks reversal because the trial court permitted a Florida Highway Patrolman to qualify as an expert and give his opinion as to the counterfeit driver's licenses. This objection is not substantiated by the record on appeal and no abuse of discretion was committed by the trial judge. See Florala Sawmill Co. v. Smith, 55 Fla. 447, 46 So. 332 (1908); Florida East Coast Ry. Co. v. Lassiter, 59 Fla. 246, 52 So. 975 (1910).

The judgment herein appealed is, therefore,

Affirmed.

APPENDIX H

(TITLE OMITTED)

CASE NO. 67-1021

Counsel for appellant having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy

ATTEST:

Signature Illegible
Clerk District Court of
Appeal, Third District

cc: Gerald Kogan
Earl Faircloth
J. F. McCracken

(THE MANDATE IN THE ABOVE STYLED CAUSE HAS TODAY BEEN ISSUED AND MAILED TO THE CLERK OF THE CRIMINAL COURT OF RECORD FOR DADE COUNTY, FLORIDA)

APPENDIX I

(TITLE OMITTED)

CASE NO. 37,890

**DISTRICT COURT OF APPEAL,
THIRD DISTRICT**

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

CC: Hon. W. P. Carter
Hon. J. F. McCracken
Messrs. Gerald Kogan & H. Robert Koltnow
Hon. Earl Faircloth
Hon. Melvin Grossman

APPENDIX J

(TITLE OMITTED)

CASE NO. 37,890

Petitioner's petition for rehearing is hereby denied and it is further

ORDERED that petitioner's motion to stay mandate is hereby denied.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

CC: Messrs. Gerald Kogan & H. Robert Koltnow
Hon. Earl Faircloth